



0000142934

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS**DOCKETED**

FEB - 6 2013

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

DOCKETED BY

nr

IN THE MATTER OF THE APPLICATION OF
INTRADO COMMUNICATIONS INC. FOR
APPROVAL OF A CERTIFICATE OF
CONVENIENCE AND NECESSITY TO PROVIDE
RESOLD AND FACILITIES-BASED LOCAL
EXCHANGE, AND PRIVATE LINE
TELECOMMUNICATIONS SERVICES IN
ARIZONA.

DOCKET NO. T-20750A-10-0289

DECISION NO. 73676**OPINION AND ORDER**

DATE OF HEARING: September 11, 2012
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Yvette B. Kinsey
APPEARANCES: Mr. Michael W. Patten, ROSHKA, DEWULF & PATTEN, on behalf of Applicant; and
Ms. Bridget A. Humphrey, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On July 14, 2010, Intrado Communications Inc. ("Intrado" or "Company") filed with the Arizona Corporation Commission ("Commission") an application for approval of a Certificate of Convenience and Necessity ("CC&N") to provide facilities-based long distance and facilities-based local exchange telecommunications services in Arizona. Intrado's application also requests a determination that its proposed services are competitive.

On November 16, 2011, Intrado filed an amended application requesting to provide only resold local exchange, facilities-based local exchange, and private line telecommunication services in Arizona.

On July 26, 2012, Staff filed a Staff Report recommending approval of Intrado's application subject to certain conditions.

...

1 On July 30, 2012, by Procedural Order, the hearing in the matter was scheduled to commence
2 on October 1, 2012, and other procedural deadlines were established.

3 On August 20, 2012, Intrado docketed its Affidavit of Publication.

4 On September 6, 2012, Michael W. Patten of Roshka DeWulf & Patten, PLC filed Notice of
5 Appearance on behalf of Intrado Communications, Inc.

6 On October 1, 2012, a full public hearing was held before a duly authorized Administrative
7 Law Judge of the Commission at its offices in Phoenix, Arizona. The Applicant and Staff appeared
8 through counsel and presented evidence and testimony. No members of the public appeared to give
9 public comments in this matter. At the conclusion of the hearing the matter was taken under
10 advisement pending submission of a Recommended Opinion and Order of the Commission.

11 * * * * *

12 Having considered the entire record herein and being fully advised in the premises, the
13 Commission finds, concludes, and orders that:

14 **FINDINGS OF FACT**

15 1. Intrado is a foreign "C" corporation, organized under the laws of Delaware, based in
16 Longmont, Colorado.¹

17 2. Intrado is a wholly owned subsidiary of Intrado, Inc., which in turn is wholly owned
18 by West Corporation, a corporation organized under the laws of Delaware and headquartered in
19 Omaha, Nebraska.²

20 3. While this matter was pending, West Corporation acquired HyperCube, LLC a
21 certificated Arizona Company with authority to provide telecommunication services.³ Therefore,
22 Intrado has an affiliate operating in Arizona.

23 4. On July 14, 2010, Intrado filed an application seeking authority to provide intrastate
24 facilities-based long distance and facilities-based local exchange telecommunications in Arizona.⁴

25 5. On November 6, 2010, Intrado filed an amended application requesting to provide only
26

27 ¹ Exhibit A-1, attachment A-1.

² Exhibit A-1, attachment A-3 and Exhibit S-1.

³ Commission Decision No. 73154 (May 18, 2012).

⁴ Exhibit A-1.

1 resold local exchange, facilities-based local exchange, and private line telecommunication services in
2 Arizona.⁵

3 6. Notice of the amended application was given in accordance with the law.⁶

4 7. Staff recommends approval of Intrado's amended application for a CC&N to provide
5 its requested telecommunications services in Arizona.

6 8. Staff recommends that:

- 7 a. That Intrado comply with all Commission Rules, Orders and other
8 requirements relevant to the provision of intrastate telecommunications
9 services;
- 10 b. That Intrado comply with Federal laws, Federal rules and A.A.C. R14-2-
11 1308(A), to make number portability available;
- 12 c. That Intrado abide by the quality of service standards that were approved by
13 the Commission for Qwest in Docket No. T-01051B-93-0183;
- 14 d. That Intrado be prohibited from barring access to alternative local exchange
15 service providers who wish to serve areas where the Company is the only
16 provider of local exchange service facilities;
- 17 e. That Intrado provide all customers with 911 and E911 service, where available,
18 or coordinate with ILECs and emergency service providers to provide 911 and
19 E911 service in accordance with A.A.C. R14-2-1201(6)(d) and 120(6)(d)
20 Federal Communications Commission 47 CFR §§ 64,3001 and 64.3002;
- 21 f. That Intrado be required to notify the Commission immediately upon changes
22 to the Company's name, address or telephone number;
- 23 g. That Intrado cooperate with Commission investigations including, but not
24 limited to customer complaints;
- 25 h. The rates proposed by this filing are for competitive services. In general, rates
26 for competitive services are not set according to rate of return regulation. Staff
27 obtained information from Intrado and has determined that its fair value rate
28 base is zero. Staff has reviewed the rates to be charged by the Company and
believes they are just and reasonable. The rates to be ultimately charged by the
Company will be heavily influenced by the market. Therefore, while Staff
considered the fair value rate base information submitted by the Company, the
fair value information provided was not given substantial weight in this
analysis;
- i. In the event Intrado requests to discontinue and/or abandon its service area, it
must provide notice to both the Commission and its customers. Such notice(s)
shall be in accordance with A.A.C. R14-2-1107;

⁵ Exhibit A-2.

⁶ Exhibit A-4.

- j. That Intrado offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
 - k. That Intrado offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated;
 - l. That the Commission authorize Intrado to discount its rates and service charges to the marginal cost of providing the services.
9. Staff further recommends that if Intrado fails to comply with the following compliance items that the Commission consider Intrado's CC&N null and void, after due process.
- a. Intrado shall docket, with the Commission's Docket Control, a conforming tariff for each service within its CC&N within 365 days from the date of a Decision in this matter or 30 days prior to providing service, whichever comes first.⁷
 - b. Intrado shall:
 - i. Procure a performance bond or an ISDLC equal to \$125,000.
 - ii. File the original performance bond or ISDLC with the Commission's Business Office and copies of the performance bond or ISDLC with the Commission's Docket Control, as a compliance item in this docket, within 90 days of the effective date of a Decision in this matter or ten (10) days before service to end-user customers is commenced, whichever comes earlier. The performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the performance bond or ISDLC, on behalf of, and for the sole benefit of the Intrado's customers, if the Commission finds, in its discretion, that the Company is in default of its obligations arising from its CC&N. The Commission may use the performance bond or ISDLC funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from Intrado's customers;
 - iii. Notify the Commission through a compliance filing within 30 days of the first customer being served.
 - c. Intrado shall abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund. TWN will make the necessary monthly payments require by .A.AC. R14-2-1204(B).

⁷ At hearing, Intrado submitted into evidence Exhibit A-3, which is the Company's revised tariff. Therefore, Intrado has complied with this recommendation by Staff.

1 10. At hearing, Intrado's witness testified that Intrado agrees to comply with of Staff's
2 recommendations.⁸

3 **Technical Capabilities**

4 11. Staff describes Intrado's proposed services as aggregate and transport emergency
5 local, Voice Over Internet Protocol ("VOIP"), telemetric, Private Branch Exchange ("PBX"),⁹ and
6 mobile E911 traffic.¹⁰ Intrado proposes to manage and transmit location and calling number data, as
7 well as provide call routing management for the delivery of emergency calls to Public Safety Access
8 Points throughout Arizona.¹¹

9 12. Intrado is currently authorized to provide telecommunication services in forty-three
10 (43) jurisdictions similar to the services it proposes to provide in Arizona.¹² At the time of the
11 hearing, Intrado was providing similar services in six states which include: Florida, Nevada, North
12 Carolina, Pennsylvania, Vermont, and Virginia.¹³

13 13. Based on the above information, Staff concluded that Intrado has the technical
14 experience to provide the telecommunications services it is requesting to provide in Arizona.¹⁴

15 **Financial Capabilities**

16 Intrado's application states that the Company does not have state-specific financial statements
17 and that the Company will rely on the financial resources of its parent company, West Corporation.¹⁵
18 Intrado provided its parent company's 10-K financial report filed with the Securities and Exchange
19 Commission for years ending December 31, 2009 and 2010, showing total assets of \$3.045 billion;
20 total stockholders' deficit of \$2.425 billion and net income of \$88.229 million for the year ending
21

22 _____
⁸ Tr. at 11.

23 ⁹ Staff explained that PBX is telephone system that serves a particular business or office.

24 ¹⁰ Exhibit S-1.

25 ¹¹ Exhibit S-1 and Tr. at 11.

26 ¹² Exhibit S-1 lists the following states where Intrado is authorized to provide similar telecommunication services:
27 Alabama, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho,
28 Indiana, Kansas, Kentucky, Louisianan, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana,
Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania,
Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and
Wyoming.

¹³ Exhibit S-1.

¹⁴ Exhibit S-1.

¹⁵ Exhibit A-1.

2009.¹⁶ Staff reported that West's unaudited financial statement for the year ending December 31, 2010, lists total assets of \$3,005 billion; total stockholders deficits of \$2.544 billion; and a net income of \$60,304 million.¹⁷

14. Intrado's amended tariff states that it does not require advance payments or deposits from its 911 customers.¹⁸

15. Based on the information contained in Intrado's amended tariff, Staff recommends that Intrado procure a performance bond or ISDLC in the amount of \$125,000.¹⁹ Staff also recommends that if Intrado, at some future date, desires to discontinue the services it is requesting to provide, that Intrado file an application pursuant to Arizona Administrative Code ("A.A.C.") R-14-2-1107, to do so.²⁰ Further, Staff recommends that Intrado's failure to meet the requirements of the rule should result in a forfeiture of Intrado's performance bond or ISDLC.²¹

Rates and Charges

16. Staff believes that Intrado will be competing with other incumbent local exchange carriers ("ILECs"), and various competitive local exchange ("CLECs"), and interexchange carriers ("IXCs") in Arizona in order to gain new customers.²²

17. Intrado projects that for the first twelve months of operation in Arizona, it will have total revenues of \$100,000; operating expenses of \$40,000; and a net book value of zero.²³

18. Staff states that rates for competitive are not set according to rate of return regulation and based on the Company's projected net book value or fair value rate base of zero, the rate to be charged will be heavily influenced by the market.²⁴ Therefore, Staff states that while it considered the fair value rate base information submitted by Intrado, it did not accord that information substantial weight in Staff's analysis.²⁵

¹⁶ Exhibit A-1, attachment D and Exhibit S-1.

¹⁷ Exhibit S-1.

¹⁸ Exhibit A-3.

¹⁹ Exhibit S-1.

²⁰ Exhibit S-1 at 3.

²¹ Exhibit S-1 at 3.

²² Exhibit S-1 at 3.

²³ Exhibit A-1 at B-4.

²⁴ Exhibit S-1 at 3.

²⁵ Exhibit S-1 at 3.

1 **Private Line Services**

2 19. Intrado proposes to provide private line telecommunications services. Staff describes
3 private line services as a direct circuit or channel specifically dedicated to the use of an end user
4 organization (i.e., University, State Agency) for the purpose of connecting two or more sites in a
5 multi-site enterprise.²⁶

6 20. According to Staff, IXC's, hold a substantial share of the private line service market;
7 ILECs and a number of CLECs are authorized to provide private line services; and Intrado will have
8 to compete with existing companies to obtain customers.²⁷

9 **Local Exchange Carrier Specific Issues**

10 21. Pursuant to A.A.C. R14-2-1308(A) and federal laws and rules, Intrado will make
11 number portability available to facilitate the ability of customers to switch between authorized local
12 carriers within a given wire center without changing their telephone number and without impairment
13 to quality, functionality, reliability or convenience of use.

14 22. In compliance with A.A.C. R14-2-1204, all telecommunications service providers that
15 interconnect into the public switched network shall provide funding for the Arizona Universal Fund
16 ("AUSF").

17 23. Intrado will contribute to the AUSF as required by the A.A.C., and shall make the
18 necessary monthly payments as required under A.A.C. R14-2-1204(B).

19 24. In Commission Decision No. 59421 (December 20, 1995), the Commission approved
20 quality of service standards for Qwest which imposed penalties due to an unsatisfactory level of
21 service. In this matter, Intrado does not have a similar history of service quality problems, and
22 therefore the penalties in that decision should not apply.

23 25. In the areas where the Company is the only local exchange service provider, Intrado is
24 prohibited from barring access to alternative local exchange service providers who wish to serve the
25 area.

26 26. Intrado will provide all customers with 911 and E911 service where available, or will

27 _____
28 ²⁶ Exhibit S-1 at 5.

²⁷ Exhibit S-1 at 6.

1 coordinate with ILECs, and emergency service providers to facilitate the service.

2 27. Pursuant to prior Commission Decisions, Intrado may offer customer local area
3 signaling services such as Caller ID and Call Blocking, so long as the customer is able to block or
4 unblock each individual call at no additional cost.

5 28. Intrado must also offer Last Call Return service, which will not allow the return of
6 calls to the telephone numbers that have the privacy indicator activated.

7 **Complaint Information**

8 29. In response to Staff's Data Request, Intrado stated that it has had two applications for
9 authority to provide the services proposed in Arizona denied.²⁸ According to Staff, in New
10 Hampshire and Iowa state court cases, Intrado, (operating under the name SCC Communications in
11 New Hampshire case), had applications for CC&Ns denied without prejudice, after the Commissions
12 determined that the Company's proposed services to provide aggregation and transport 911
13 emergency calls were not services that required a CC&N pursuant to their Commission rules.²⁹

14 30. Intrado's application indicates the Company is currently involved in two state court
15 civil cases in North Carolina³⁰ and in Ohio.³¹ The plaintiff in the Ohio case has filed an appeal and at
16 the time of the hearing the matter was still pending.³²

17 31. Aside from the above civil complaints, Staff's review did not find that Intrado or any
18 of its officers, directors, partners or managers are currently or have been involved in any other civil or
19 any criminal investigations within the last ten years.³³

20 ²⁸ Exhibit S-1 at 4.

21 ²⁹ Exhibit S-1 at 4.

22 ³⁰ Case 5:09-CV-00517-BR, *BellSouth Telecommunications, inc. d/b/a AT&T North Carolina v. Finley, et al.*, Complaint
23 for Declaratory and Injunctive Relief (E.D.N.C., filed Dec. 2, 2009). The case was an appeal by the Plaintiff (AT&T) of a
24 decision by the Defendant the North Carolina Utilities Commission that Intrado's Intelligent Emergency Network
25 services do qualify as "Telephone exchange service" as that term is defined in 47 U.S.C. § 153(a). The U.S. District
26 Court for the Eastern District of North Carolina issued an Order on December 10, 2010, denying Plaintiff's (AT&T)
27 motion for summary judgment, granting Defendant's (North Carolina Utilities Commission) motion for summary
28 judgment, and affirming the Utilities Commission's Arbitration Order that determined Intrado's emergency services
qualify as telephone exchange services under section 251(c) of the Telecommunication Act of 1996 (47 U.S.C. § 251(c)).

³¹ Case No. 2:09-CV-00918-ALM-MRA, *The Ohio Telephone Company d/b/a AT&T Ohio v. Schriber, et al.*, Complaint
(S.D. Ohio, filed Oct. 15, 2009). The case is an appeal by the Plaintiff (AT&T) of a decision by the Defendant the Public
Utilities Commission of Ohio that Intrado's Intelligent Emergency Network services do qualify as "telephone exchange
service" as that term is defined in 47 U.S.C. § 153(a). On January 6, 2012, the U.S. District Court for the Southern
District of Ohio Eastern Division issued an Opinion and Order affirming "... the arbitration award of the Public Utilities
Commission of Ohio in all disputed respects." (Case: 2:09-CV-00918-ALM-MRA, p. 37)

³² Tr. at 8.

³³ Exhibit S-1 at 5.

1 32. Staff's review of the Company's application revealed that in the six jurisdictions
 2 where Intrado is currently providing telecommunication services, no complaints had been filed
 3 against the Company.³⁴ Further, Staff did not find any instances of revocation of Intrado's authority
 4 to provide service.³⁵

5 33. The Commission's Corporations Division has indicated that Intrado is in good
 6 standing and the Consumer Services Section reports no complaints have been filed in Arizona.³⁶

7 34. Staff testified that the Company's two civil cases do not affect Staff's recommended
 8 approval of the amended application.³⁷

9 **Competitive Services Analysis**

10 35. Intrado has requested that its telecommunications services in Arizona be classified as
 11 competitive. Intrado's proposed services should be classified as competitive because there are
 12 alternatives to Intrado's services; ILECs hold a virtual monopoly in local markets; Intrado will have
 13 to convince customers to purchase its services; Intrado has no ability to adversely affect the local
 14 exchange service market as several CLECs and ILECs provide local exchange services; and Intrado
 15 therefore will have no market power in those local exchange markets where alternative providers to
 16 telecommunications services exists.

17 **Analysis**

18 Intrado's top executives possess more than 112 years of combined telecommunications
 19 experience; Intrado is currently providing its proposed services in six jurisdictions; Intrado will rely
 20 on the financial resources of its parent company; and Staff believes that Intrado's proposed tariffs
 21 will result in just and reasonable rates. Therefore, we find that Intrado has the technical and financial
 22 capabilities to provide its proposed services in Arizona. Further, because Intrado will be operating in
 23 a competitive environment, we find that Intrado's proposed tariffs will result in just and reasonable
 24 rates and that the Company's proposed tariff filings are for competitive services. Staff's
 25 recommendations as set forth herein are reasonable and will be adopted.

26
 27 ³⁴ Exhibit S-1 at 5.

³⁵ Exhibit S-1 at 4.

³⁶ Exhibit S-1 at 5.

³⁷ Tr. at 22.

CONCLUSIONS OF LAW

1. Intrado is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §40-281 and 40-282.

2. The Commission has jurisdiction over Intrado and the subject matter of the amended application.

3. Notice of the amended application was given in accordance with the law.

4. A.R.S. §§ 40-282 allows a telecommunications company to file an application for a CC&N to provide competitive telecommunications services.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for Intrado to provide the telecommunications services set forth in its amended application.

6. Intrado is a fit and proper entity to receive a CC&N authorizing it to provide competitive facilities-based local exchange, resold local exchange, and private line telecommunications services in Arizona, subject to Staff's recommendations set forth herein.

7. The telecommunications services that Intrado intends to provide are competitive within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Applicant to establish rates and charges that are not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff recommendations are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the amended application of Intrado Communications, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive facilities-based local exchange, resold local exchange and private line telecommunication services within the State of Arizona, is hereby granted subject to Staff's conditions as set forth in Findings of Facts Nos. 8 and 9.

IT IS FURTHER ORDERED that Intrado Communications Inc. shall procure a performance

1 bond or irrevocable sight draft letter of credit in the amount of \$125,000.

2 IT IS FURTHER ORDERED that Intrado Communications Inc. shall file the original
3 performance bond or irrevocable sight draft letter of credit with the Commission's Business Office
4 and thirteen (13) copies of the performance bond or irrevocable sight draft letter of credit with
5 Docket Control, as a compliance item in this docket, within 90 days of the effective date of this
6 Decision or 10 days before the first customer is served, whichever comes earlier. The performance
7 bond or irrevocable sight draft letter of credit shall remain in effect until further order of the
8 Commission. The Commission may draw on the performance bond or irrevocable sight draft letter of
9 credit on behalf of and for the sole benefit of Intrado's customers, if the Commission finds, in its
10 discretion, that Intrado is in default of its obligations arising from its Certificate. The Commission
11 may use the performance bond or irrevocable sight draft letter of credit, as appropriate, to protect
12 Intrado's customers and the public interest and take any and all actions the Commission deems
13 necessary, in its discretion, including, but not limited to returning prepayments or deposits collected
14 from Intrado's customers.

15 ...

16 ...

17 ...

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

1 IT IS FURTHER ORDERED that if Intrado Communications Inc. fails to comply with Staff's
 2 conditions set forth in Finding of Fact No. 9, the Certificate of Convenience and Necessity granted
 3 herein shall be considered null and void after due process.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

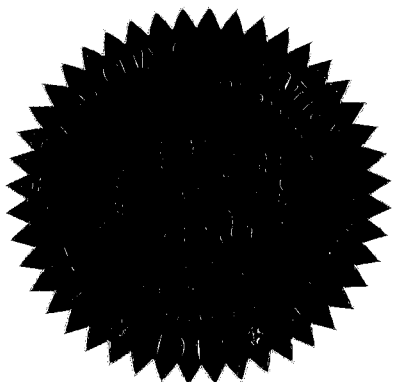
6
 7
 8 CHAIRMAN

COMMISSIONER

9
 10 COMMISSIONER

COMMISSIONER

COMMISSIONER



11
 12 IN WITNESS WHEREOF, I, JODI JERICH, Executive
 13 Director of the Arizona Corporation Commission, have
 14 hereunto set my hand and caused the official seal of the
 Commission to be affixed at the Capitol, in the City of Phoenix,
 this 6th day of February 2013.

15
 16 JODI JERICH
 17 EXECUTIVE DIRECTOR

18 DISSENT _____

19
 20 DISSENT _____

1 SERVICE LIST FOR: INTRADO COMMUNICATIONS INC.

2 DOCKET NO.: T-20750A-10-0289

3 Sharon Thomas
4 TECHNOLOGIES MANAGEMENT INC.
5 2600 Maitland Center Parkway, Suite 300
6 Maitland, FL 62751
7 Consultants to Intrado Communications, Inc.

8 Richard B. Johnson
9 Manager, Regulatory Affairs
10 INTRADO COMMUNICATIONS, INC.
11 601 Dry Creek Drive
12 Longmont, CO 80503

13 Janice Alward, Chief Counsel
14 Legal Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
17 Phoenix, AZ 85007

18 Steven M. Olea, Director
19 Utilities Division
20 ARIZONA CORPORATION COMMISSION
21 1200 West Washington Street
22 Phoenix, AZ 85007

23

24

25

26

27

28

29

30

31

32

33

34

35

36